IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
MISC. PETITION NO. 18 OF 2003

Unit Trust of India ......Petitioners
vs.
LVS Power Ltd and Ors. ......Respondents

Ms. Iyer with c. Balsara and M. Modi i/b. K. Ashar and Co. for Respondents.

P.A. Sawant with A.H. Shukla i/b. Shukla and Shukla for the petitioners.

CORAM: S.U. KAMDAR, J.

DATE : 2ND MAY, 2005.

P.C. :

1. The present petition is filed by the UTI for recovery of sum of Rs.1,86,91,199/-. The present petition is filed under s.19(b) of the UTI Act, 1963. some of the material facts of the present case are briefly set out as under :

2. An erstwhile company known as UTI was constituted and established under the provisions of the Unit Trust of India Act, 1963. The said act has been since repealed by the UTI (Repeal....). Under the provisions of the said

repeal act a new body has been constituted known as Administrator of Specified Undertaking of Unit Trust of India being a successor of UTI. The said repeal act has come into operation with effect from 1.2.2003.

3. The respondent company is a public limited company under the meaning of the Companies Act-I of 1956. The respondent no.1 is inter-alia carrying on business of power generation and distribution of powers. The respondent no.1 approached the petitioner for a loan of sum of Rs.900 lacs by way of secured non-convertible debentures. The respondent no.1 is the subscriber to the said 900 debentures of the face value of Rs.1000/- each aggregating to 9 crores. The respondent no.2 is IDBI and has been appointed as a debenture trustee inrespect of the debentures issued by the respondent no.1 to the petitioner herein. In pursuance of the said amount lent and advanced by way of secured redeemable non-convertible debentures the

respondent no.1 created security in favour of the respondent no.2 being the debenture trustee for the benefit of the petitioner securing the repayment of the money advanced by the petitioner to the respondent no.1 On 28.6.1999 the petitioner agreed and sanctioned the said loan by way of issuance of debentures on the various terms and conditions as contemplated under the sanction letter dated 3.2.1993. Thus the assets of the company are secured in favour of the petitioner for due repayment of the said Rs.900 lacs redeemable non convertible debentures. The respondent no.1 had issued an allotment letter to the erstwhile UTI towards the subscription of non-convertible debentures, and on 27.1.2000 the subscription agreement was executed between the respondent no.1 and the petitioner. In pursuance of the said agreement dated 27.1.2000 the respondent no.1 has created a mortgaged of the various properties situated at Vishakapatnam in the state of Andhra Pradesh and hypothecation of the movable properties lying therein.

4. The respondent no.1 has also executed several documents as security for repayment of the said debentures amount with interest Under the terms and conditions of the said debentures agreement the interest amount was payable on 31.3.2000 i.e. payable in quarterly instalments and the entire amount was to be repaid in 32 equal instalments commencing from 30.1.2002 as provided in the said subscription. The respondent failed and neglected to make payment of the interest amount and other properties payable in respect of the said debentures and failed to redeem the debentures. On 3.1.2002 the petitioner interalia recorded failure on the part of the respondent no.1 to repay the said amount and called upon them to redeemed the said debentures of Rs.8,7,00,000/- with interest thereon.

5. It is the case of the petitioner that on 20.11.2002 there was an outstanding amount of Rs.8,72,48,165/-. the said notice of default was duly served but inspite of service of the said

default notice the respondent has not made payment of the aforesaid amount. In view thereof the petitioner has filed the present proceedings for enforcement of the security which was created in favour of the UTI. Section 19(b) of the Act inter-alia provides that where a company or any other body commits breach of any terms and conditions of the agreement or makes any default in repayment of any loan or instalment thereof or in making its applications or otherwise fails to comply with the terms of its agreement without prejudice to the provisions of Transfer of Property Act the trust can make an application to the court for the reliefs which are set out thereof which inter-alia provides for following reliefs.

(a) confirming the order of attachment and directing the sale of the attached property ; or

(b) varying the order of attachment so as to release a portion of the

property from attachment and directing the sale of the remainder of the attached property; or

(c) releasing the property from attachment if it is satisfied that it is not necessary in the interests of the Trust ; or

(d) confirming or vacating the injunction ; or

(e) transfering the management of the company or other body corporate to the Trust or rejecting the claim made in this behalf :

6. The Respondent no.1 company has resisted the present application by filing two affidavits in reply dated 8.7.2002 and 19.3.2005 The learned counsel appearing on behalf of respondent no.1 has also tendered the written submissions. By

the said written submissions the following two points are raised in defence :

7. It has been contended that in view of the orders passed by the Supreme court in matters arising out of the same bundle of facts and events is it permissible for the petitioners to recall and realize its loan by enforcing securities. Whether the petitioner should be permitted to prosecute its application for claim of loan and interest when there is an amount of Rs.14.00 crores lying in the account as per the orders passed by the Supreme court. IDBI as respondent no.2 in the present petition is a debenture trust holder has moved this court after almost 17 to 18 adjournments in the matter. On 27.4.2005 learned counsel appearing for IDBI pressed for time to be impleaded as a party in a capacity as a lender in addition to its capacity as a debenture trust holder. Though I was not impressed with the said application for an adjournment by the IDBI which was plainly because IDBI being already party to the present petition

never bothered to appear in the court from 2003 to 2005. Once the IDBI is a party may be in a capacity of debenture holder it can always make his submissions and file its reply to protect its interest even in a capacity of lender. Still as a matter of opportunity I gave time and adjourned the matter today i.e. to 2.5.2005. Inspite of giving time IDBI has not moved any application whatsoever and has w taken no efforts in the matter. In view thereof I am rejecting a further request for an adjournment placed before me by the learned counsel for the second respondent.

8. In so far as the defence of respondent no.1 is concerned it is significant to note that the liability to repay the loan advanced under secured debenture is admitted. It is also admitted that for the repayment of the aforesaid loan the respondent no.1 has also created various securities. It is an admitted position that the said claim has become due and payable by respondent no.1 to the petitioners. Inspite of various notices the petitioner has failed and

neglected to make re-payment of the principal amount and interest thereon. The only defence raised by the respondent no.1 pertains to the proceedings pending in the Supreme Court and orders passed therein. In my opinion the said proceedings which are pending in the Supreme Court has nothing to do with the present miscellaneous petition. The said proceedings arises out of the disputes between the state of Andhra Pradesh and respondent company pertaining to electricity generation and distribution. The dispute is between the electricity board and the respondent company in respect of fixation of electricity tariff by the respondent no.1.

9. In the said dispute pending before the supreme court, the supreme court has fixed the interim rate of Rs.2.71p which the respondent company is entitled to charges for the distribution of the electricity. However it has been contended by the learned counsel for the respondent company that pursuant to the said order whatsoever amount received by the

respondent company has been deposited in a separate account and from there various amount is disbursed to the various parties including petitioner herein. It has been thus contended that the present proceedings in the aforesaid circumstances should not be proceeded with. I am not impressed with the aforesaid submissions because the present petition is for recovery of overdue loan amount which is payable on maturity date of non-convertible debentures. This proceedings therefore can not be linked with the proceedings pertaining to rate fixation dispute by and between the respondent no.1 and state of Andhra Pradesh. The next point raised before me is that the financial institutions are seeking to work out a one time settlement by reducing their claim and rescheduling the repayment thereof. However it is an admitted position that UTI is not a party to any such one time settlement though various notices are given to the petitioner but the petitioner has refused to be part of such one time settlement alongwith other financial institution. On the aforesaid two

grounds it has been contended by the learned counsel for the respondent that firstly the present petition should not be granted and the same should be dismissed. I am of the view that it is not within my jurisdiction to pass such order under section 19(b). The present petition can be filed by the petitioner for recovery of dues. If the petitioner is not willing to be a party for one time settlement and join the other financial institutions the court cannot by passing the order force the petitioner to join such one time settlement. Apart therefrom I do not find any such final one time settlement has been arrived by and between the respondent no.1 and financial institution. Alternatively the learned counsel for the respondent no.1 has argued that the present petition should be adjourned till the negotiations of settlement work out between the parties. I have myself adjourned the matter for almost 9 times so that the settlement may be arrived at between the parties and the matter has been heard today which is the tenth hearing before me. Inspite of

adjournments granted on the earlier nine occasions the parties have not come forward with any such one time settlement. In view thereof I find that inspite of number of opportunities were granted to settle the matter but inspite of that the matter has not worked out. I am therefore required to decide the petition in accordance with law. I do not find any merits in the contentions of the learned counsel for the respondent no.1 that because of the interim orders of the supreme court fixing the rate between the State Government and the respondent no.1 of electricity charges the present petition must not proceed and must be dismissed. I therefore reject the said contention. However, whilst passed the final orders in the present petition I gave one opportunity to the respondent no.1 either to work out the matter between the parties or to obtain necessary orders from the apex court in the pending proceedings to the claim of the petitioner in the present case. I thus pass the following order.

10. The present petition is made absolute in terms of prayer clause (a) and (b). However I stay the operation and implementation of the said order upto 31.10.2005 so as to unable the respondent no.1 to approach the Supreme court in the pending proceedings for obtaining appropriate orders in respect of the claims of the UTI or work out any settlement between the parties. It is made clear that if no order is obtained from the Supreme or no settlement is worked out by 31.10.2005 the present order would become forthwith operative and shall be enforced.

******** sd/-